

**AGENDA MEMO**

**CITY COUNCIL MEETING DATE: APRIL 18, 2007**

**DEPARTMENT: BUSINESS DEVELOPMENT**

**ITEM DESCRIPTION: Discussion and possible action regarding an Amended Restated Exclusive Negotiation Agreement with Frank Wright Plaza, LLC, to negotiate a Disposition and Development Agreement for parcels located at 4<sup>th</sup> Street and Stewart Avenue**

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1. On June 15, 2005, Council approved an Exclusive Negotiation Agreement (ENA) to allow the City and The Henry Brent Company, LLC (Henry Brent) to negotiate terms of a Disposition and Development Agreement (DDA) for parcels located at 4<sup>th</sup> St. and Stewart Ave. (Site). DDA terms subject to negotiation include (but are not limited to): a. Scope of development; b. Phasing of development; c. Schedule of performance; d. Purchase price; and, e. Earnest money deposit.
2. On November 9, 2005, Henry Brent and Frank Wright Plaza, LLC (FWP) executed an Assignment and Assumption Agreement whereby Henry Brent assigned all of its rights and obligations under the ENA to FWP and FWP accepted said assignment and assumption. FWP was formed specifically by Henry Brent to serve as the Developer of the Site and both entities are owned by the same principals. On May 17, 2006, Council approved the Second Amendment to the ENA in order to extend the ENA term to December 20, 2006. On December 6, 2006, the Council approved the Third Amendment to the ENA in order to extend the ENA term to April 18, 2007.
3. The City has a good faith deposit of \$100,000 for the ENA to ensure that the Developer proceeds diligently to negotiate and perform all of its obligations under the ENA. Should the Developer fail to negotiate in good faith on the terms of a DDA, the deposit may be retained by the City.
4. As part of the ENA, the Developer (at its expense) must complete a master plan for the Site (Master Plan) to define a scope of development that incorporates the highest and best use with the preservation of the historic Post Office (the POST Modern). At the City's request, the Developer is making revisions to the Master Plan to best achieve these goals.
5. In addition, covenants in the Grant Deed from the U.S. General Services Administration that conveyed ownership of the POST Modern to the City require that the National Park Service (NPS) review and approve the Master Plan. Until the NPS has approved the Master Plan, final terms of the DDA cannot be negotiated between the City and the Developer.
6. The Amended and Restated Exclusive Negotiation Agreement (Amended ENA) will extend the Negotiation Period to October 17, 2007, to negotiate DDA terms and allow Council to consider the DDA. In addition, the first 60 days of the Negotiation Period will be a Performance Period during which FWP must begin construction and show reasonable progress on the renovations to the Lady Luck Casino Hotel (among other conditions) or the Amended ENA will terminate automatically.